IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5424 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MUKESHKUMAR V THAKKAR - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1,MR BIREN A VAISHNAV for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/03/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under

Article 226 of the Constitution of India praying for quashing and setting aside the order passed by the respondent No.1 on 8.4.1994 holding the same to be arbitrary, malafide and in contravention of the order passed by this Court in Special Civil Application No.7463 of 1991 and Special Civil Application No.549 of 1994. The petitioner has also prayed for the direction to the respondent to regularise the service of the petitioner on or before 21.4.1994 in view of the directions issued in Special Civil Application No.7463 of 1991 and in view of the statement made by the learned AGP on behalf of the respondent in Special Civil Application No.549 of 1994. The petitioner has further prayed for the direction to the respondent to include the name of the petitioner in the candidates to be sent for training commencing from 6.6.1994. The petitioner has prayed for the interim relief

seeking direction to the respondents not to terminate the services of the petitioner on the ground that he has not appeared in the examination which may be held in pursuance of an advertisement issued by Gujarat Subordinate Services Selection Board.

2. The petition was admitted and rule was issued on 18.4.1994. Ad-interim relief in terms of para-12(B) was granted by this Court. Despite the order passed by this Court directing the respondents to file counter affidavit, no such affidavit has been filed till this date.

3. Mr.B.A.Vaishnav, learned advocate appearing for the petitioner has submitted that the petitioner has been serving with the respondent since 1982 and he has been working like a permanent employee discharging the duties like similarly situated permanent employees. He has

further submitted that the petitioner's services were not regularised even though he has completed more than 10 years of service from the date of filing Special Civil Application No.7463 of 1991 before this Court. While disposing of the said petition on 15.1.1993 this Court has observed that when the petitioner has completed about 10 years of service and was appointed through the Employment Exchange and when the services of other persons were regularised there was no reason for the respondent authorities not to regularise the services of the petitioner. The Court has further observed that since the petitioner was working as Clerk-cum-typist, if before regularization, the petitioner has to undergo a training or examination, the petitioner will have to clear that examination or training. If there was any age limit for the purpose of appearing in the examination or

training the respondent would waive that condition and allow the petitioner to appear at the training or examination, if any.

4. Mr.Vaishnav has further submitted that the petitioner had already passed a pre-service training examination in the year 1986 and the Certificate issued to that effect was produced alongwith the petition. It is further submitted that in view of the judgment of this Court in the above referred Special Civil Application the respondents were to regularise services of the petitioner and were supposed to treat the petitioner as regular employee of the respondents. It is further submitted that the permanent employees of the respondents in the cadre of Sr.Clerk, Jr.Clerk, Typist, Store-Keeper, Assistant Keepers etc, were to undergo a regular training for the purpose of considering the question of promotion to be

given to them and one of such training was commencing with effect from 17.1.1994 for which the name of the petitioner was not included in the said training and hence the petitioner has filed Special Civil Application No.549 of 1994 before this Court. At the time of hearing of the said petition a statement was made by the learned AGP on instructions that the question of regularisation of the petitioner was under consideration, and was likely to be decided before the next training was commenced and the petitioner would be permitted or ordered to undergo the training commencing next, which was likely to be commenced within three months. The Court has also recorded the statement made on behalf of the respondent by the learned AGP that there were about 22 candidates and, therefore, the question was required to be considered and it was under consideration.

5. Despite the aforesaid order passed by this Court on 21.1.1994, no decision was taken by the respondent authorities and hence the petitioner has filed MCA No.71 of 1994 for committing contempt by the respondents of the order passed by this Court. The said Civil Application was disposed of by this Court on 14.2.1994, wherein it was observed that there was statement made on behalf of the respondent that another training was likely to commence within three months and that the question of regularisation would be decided before the next training was commenced and the petitioner would be permitted to undergo the training. In this view of the matter, the Court has not entertained the said Contempt Petition.

6. Mr.Vaishnav has further submitted that the regular training of the employees of different cadres was commenced from 6.6.1994 for a period

of 2 months for the purpose of considering the case of respective candidates for promotion. The petitioner has also filled in the form duly recommended by the Deputy Executive Engineer. He has further submitted that the respondent has passed an order on 8.4.1994, wherein it was stated that the petitioner would have to appear and pass the examination of typist conducted by the Selection Committee in pursuance of an advertisement which may be issued by the Gujarat Subordinate Services Selection Board. It was further stated in the said order that the petitioner would be given one more opportunity to appear in the said examination and if the petitioner did not clear the said examination in first attempt, he would be dismissed from Government service without issuing any notice. He has further submitted that the said order is absolutely arbitrary, mala fide and violative of Articles 14 and 16

of the Constitution of India and in contravention of orders passed by this Court.

7. Mr.Vaishnav has further submitted that during the pendency of the aforesaid petition, the petitioner has moved Civil Application No.11927 of 2000 praying for the direction to the respondent to give benefit of regularization to the petitioner from the date of his appointment as given to other 22 employees on the post of Gujarati Typist on temporary establishment and not in work change establishment. The petitioner has also prayed for the direction in the said Civil Application to the respondent authorities to give benefits of higher pay scale in the post of Sr.Clerk with effect from June, 1991 as prayed for by the petitioner in Special Civil Application No.7463 of 1991 which came to be allowed and not with effect from 1994 merely because the petitioner has

passed the said examination in 1994. The said Civil Application was disposed of by this Court on 26.12.2000 holding that the main petition is pending before this Court for final hearing wherein the same relief was prayed for. He has further submitted that the GAD Department of State Government has issued resolution dated 23.9.1999 wherein it was declared that the employees who have been selected directly from employment exchange during 1978 to 1990, even though they were selected on the post of Jr.Clerk, Clerk-cum-typist and Typist cadre irregularly on a condition for going for re-interview would be given benefit of the said Government Resolution, whereby an earlier condition laid down in the order dated 8.4.1994 stood cancelled. The Government Resolution was very clear with regard to waiver of condition. The petitioner was also eligible as he was holding all the requisite qualification like

holding of SCC qualification as well as speed of 25 w.p.m in Gujarati typing etc. The petitioner was holding better qualifications of passing of speed of 40 w.p.m as far as Gujarati typing and 30 w.p.m in Gujarati Stenography is concerned. Despite this fact, the petitioner was not given the said benefit of Government Resolution dated 23.9.1999, whereas all the 22 candidates were given the benefits of regularisation from the date of appointment though none of them had undergone pre-service training or lower grade clerical training. He has, therefore, submitted that except the petitioner, rest of other candidates were given the said benefits and the petitioner was denied merely because he approached this Court for redressal of his grievances. The petitioner was entitled to get the same and the Head of Department has also recommended for the same vide letter dated 2.11.1999. He has, therefore,

submitted that merely because the petitioner has approached this Court, the petitioner should not be denied the benefit of the said resolution dated 23.9.1999. He has further submitted that time and again the petitioner has approached the respondent authorities and made several representations. However, the same has not been considered and the petitioner's services were not regularised. He has, therefore, submitted that in view of subsequent development the condition imposed in order dated 8.4.1994 to go for the examination is required to be waived and the petitioner may be regularised in the same manner as other 22 persons were regularised.

8. Mr.M.A.Patel, learned AGP appearing for the respondent authorities, however, tried to justify the action of respondent authorities and submitted that no relief be granted to the

petitioner in this petition.

9. After having heard learned advocates appearing for the respective parties and after having gone through the earlier orders passed by this Court from time to time as well as averments made in the petition and subsequent developments which have taken place whereby 22 persons have been regularized waiving the condition for appearing in the examination, the Court is of the view that way back on 15.1.1993 this Court has passed the order directing the respondent authorities to regularise service of the petitioner on the condition that the petitioner may appear and pass the examination and same was already complied with by the petitioner and necessary evidence to that effect was also produced in the petition. The Court is of the view that when in the case of other 22 candidates benefit of resolution dated

23.9.1999 is given, there is no justification in insisting that the petitioner should pass the examination pursuant to an advertisement that may appeared in future. It is nothing but in violation of the order passed by this Court and also discriminatory in nature and hence violative of Article-14 of the Constitution. A specific statement was made before this Court in the earlier proceeding that the petitioner's case will be considered alongwith other 22 persons and despite this fact it has not been considered and the petitioner has to pass through this long battle for regularisation of service. The Court is, therefore, of the view that the petition deserves to be allowed and the relief is prayed for in the present petition deserves to be granted. The Court, therefore, directs the respondent authorities to consider the case of the petitioner for regularisation of service in light of the

aforesaid observations without insisting for fulfillment of the condition imposed in the order dated 8.4.1994. Since the petitioner has not been paid his legitimate dues from 1993, the respondent authorities are hereby directed to take appropriate decision in the matter considering the case of other 22 candidates and further considering the observations made by this Court in the several orders which are referred to herein above within the period of 3 months from the date of receipt of writ of this Court or from the date of receipt of certified copy of this order, whichever is earlier and grant all consequential benefits to the petitioner pursuant to the decision that may be taken by the respondent authorities.

10. Subject to the aforesaid directions and observations the petition is allowed. Rule is made absolute to the above extent without any

order as to costs.

(K. A. PUJ, J.)

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